



# West Virginia Ethics Commission

## FREQUENTLY ASKED QUESTION

### What is the difference between Employment Exemptions and Revolving Door Prohibitions?

The Ethics Commission recognizes that there has been confusion in regard to the meaning and application of employment exemptions. In particular, it appears that some members of the public, press and public officials believe that an employment exemption relieves public servants from post-government service, *i.e.* revolving door, limitations in the Ethics Act. The Commission takes this opportunity to explain the difference between an employment exemption and revolving door limitations.

#### EMPLOYMENT EXEMPTIONS

The Ethics Act contains provisions governing the steps which a public servant must take before seeking employment with a vendor or regulated entity. See W.Va. Code § 6B-2-5(h) and Title 158, Series 11. The purpose of the employment exemption process is to provide a mechanism for full-time public servants to begin their job search so long as they put their supervisor on notice and are removed from the decision-making process affecting businesses, including law firms, with whom they are communicating about potential job opportunities.<sup>1</sup> If a public servant terminates his or her public service, then he or she is **not** required to seek an exemption for purposes of speaking with potential employers because the public servant no longer exercises control over potential employers through their government position. The exemption requirement only applies to persons during their government service.

Public servants must demonstrate that they will be adversely affected if they are not granted an exemption. Historically, the Commission has found that a person will be adversely affected if prohibited from exploring employment opportunities during their government service. To find otherwise would require the public servant to first terminate his or her public employment.

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<sup>1</sup> Certain employees must also obtain an exemption if their **secondary** employment activity conflicts with their public job duties. Those exemptions are decided on a case-by-case basis and the granting thereof depends, in large part, upon the public servant's responsibilities and whether their supervisor is willing and able, based upon agency resources, to remove them from any job responsibilities which may conflict with their secondary employment activity.

The majority of public servants are financially unable to terminate their employment before even beginning to look for a new job. Moreover, to ban public servants from seeking employment during their public service would appear inconsistent with the law of other states.

## **POST EMPLOYMENT RESTRICTIONS**

### **Revolving Door**

After public servants leave government, there are other limitations on their employment activities. Pursuant to the Ethics Act, a public official, attorney or accountant may not appear back before their agency for a **one year** period for the following purposes:

- (A) A contested case involving an administrative sanction, action or refusal to act;
- (B) To support or oppose a proposed rule;
- (C) To support or contest the issuance or denial of a license or permit;
- (D) A rate-making proceeding; and
- (E) To influence the expenditure of public funds.

**W.Va. Code § 6B-2-5(g).** This waiting period is commonly referred to as the revolving door prohibition as it limits how soon a public servant may appear back, *i.e.* revolve back, before his or her former agency. For example, an attorney who leaves the Human Rights Commission may not represent clients before the Human Rights Commission for a one year period thereafter.<sup>2</sup> See A.O. 2007-04. While the Ethics Commission is authorized to grant an exemption to the revolving door prohibition, historically, it has not granted such exemptions; in fact, the only time it granted an exemption was in A.O. 89-134. Indeed, there have not been many requests for such exemptions.

The Ethics Act also prohibits former and current public servants from representing clients in any contested cases, rate-making proceedings, license or permit application proceedings, regulation filings or other particular matters involving a particular party or parties which arose during their public service and in which they substantially participated.<sup>3</sup> There is an exception if the government agency consents to their representation. Further, this limitation does not apply if their client was only affected as a member of a class of five or more persons or businesses.

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<sup>2</sup> Government attorneys are also subject to the Rules of Professional Conduct. Rule 1.11, entitled Successive government and private employment, and Rule 1.12, contain similar limitations. However, the Ethics Commission has no power to interpret these provisions. Any questions regarding their application should be directed to the West Virginia State Bar, Office of Disciplinary Counsel.

<sup>3</sup> W.Va. Code § 6B-2-5(f)

## **Lobbying**

Public servants holding the following positions after July 1, 2011, must wait one year before registering as a lobbyist: (a) Members of the Legislature; (b) Elected Members of the Board of Public Works; (c) Members of the Supreme Court of Appeals; (d) Will and pleasure professional employees working under the direct supervision of a Member of the Legislature; (e) Will and pleasure professional employees of Elected Members of the Board of Public Works who: (i) are under their direct supervision; and, (ii) regularly, personally and substantially participate in a decision-making or advisory capacity; (f) Secretaries of Executive Branch Departments; and, (g) Heads of any state departments or agencies.

The Commission has no authority to grant an exemption to this prohibition.

## **Miscellaneous**

No provision in the Ethics Act specifically prohibits public officials from working for a particular business after they leave government service. Several opinions of the Commission indicate that there may be limits in regard to being employed in positions funded by grant monies that public servants, through their prior public positions, helped secure.<sup>4</sup> A public servant who has sought to secure a grant should first check with the Ethics Commission before seeking employment funded by the grant.

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<sup>4</sup> A.O.s 96-43 and 2001-32